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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Sherman Lyons, Jr., et al.,

10 Plaintiffs,

11 v.

12 Julio Aldecocera, et al.,

13 Defendants.
14

No. CV-24-01373-PHX-DWL

ORDER

15 Pending before the Court is a motion for extension of time (Doc. 7) filed by
16 Defendant Julio Aldecocera and an entity not currently named as a defendant, Lakeview
17 Loan Servicing, LLC (“Lakeview”). The motion asserts that Aldecocera is Lakeview’s
18 CEO and that counsel for Aldecocera and Lakeview (“Counsel”) conferred with “Plaintiff”
19 (presumably the individual Plaintiff, Sherman Lyons, Jr.), who confirmed that he “meant”
20 for Lakeview “to be a party defendant even though Lakeview is not separately named.”
21 (*Id.*) Counsel asked Plaintiff to stipulate to a 30-day extension of the deadline to respond
22 to the complaint, as Counsel “was out of the office last week and part of the week before
23 and needs additional time to prepare and file appropriate motions to address (a) the
24 improper naming of the CEO of Lakeview, (b) lack of personal jurisdiction, (c) lack of
25 service, and (d) failure to state a claim,” but Plaintiff “refused to agree to an extension.”
26 (*Id.*)

27 The motion will be granted without further briefing. There is no conceivable
28 argument against permitting Defendants a 30-day extension, as Counsel’s time out of the

1 office and the complexity of the upcoming response adequately justify the extension
2 request, and at any rate, short extensions at this stage of the litigation are routinely sought
3 and granted. Agreeing to reasonable extension requests is a basic civility in litigation.
4 Plaintiff is reminded that “not only must *pro se* litigants follow the same rules of procedure
5 that govern other litigants, but they must also conduct themselves with the same civility,
6 decorum, and professionalism that is expected of attorneys,” including “the
7 professional courtesy of agreeing to reasonable requests to extend deadlines.” *Martin v.*
8 *Pizza*, 2022 WL 4000640, *2 (D. Nev. 2022).

9 Furthermore, it appears that an amended complaint might be necessary to add
10 Lakeview as a defendant. It would be more efficient for the amendment to precede the
11 contemplated motions. As noted in the Court’s preliminary order, and in conformity with
12 LRCiv 12.1(c), the Court “requires that: (1) before filing a Rule 12(b)(6) motion to dismiss
13 or a Rule 12(c) motion for judgment, the movant must confer with the opposing party to
14 determine whether such motion can be avoided; and (2) the movant must attach a certificate
15 of conferral, certifying that it notified the opposing party of the issues asserted in its motion
16 and that the parties conferred but were unable to agree that the pleading was curable in any
17 part by a permissible amendment offered by the pleading party.” (Doc. 5 at 4.)

18 As a final matter, Lyons Family Trust lacks the capacity to sue and is not a proper
19 party to this case. Arizona law governs this issue. Fed. R. Civ. P. 17(b)(3) (capacity to
20 sue, for parties other than individuals or corporations, is determined by the law of the state
21 where the court is located, with exceptions not relevant here); *Irwin Union Collateral Inc.*
22 *v. Peters & Burris, LLC*, 2009 WL 5184902, *3 (D. Ariz. 2009) (“[S]ince the trust is neither
23 an individual nor a corporation, the law governing whether the Sass Trust has the capacity
24 to sue or be sued is governed by Arizona law, the state in which this Court sits.”).

25 In general, a trust “lack[s] the capacity to sue or be sued under Arizona law.” *Irwin*
26 *Union*, 2009 WL 5184902 at *4; *see also* 76 Am. Jur. 2d Trusts § 601 (“At common law,
27 a trust cannot sue or be sued because it is not a juristic person. In most jurisdictions, a trust
28 is not an entity separate from its trustees, and cannot sue or be sued in its own name, and

1 therefore, the trustee, rather than the trust, is the real party in interest in litigation involving
 2 trust property. Because a trust is not a legal entity, and does not have capacity, any suits
 3 involving the trust must be brought by or against the trustees.”); *Matter of Book*, 2019 WL
 4 2394259, *2 (Ariz. Ct. App. 2019), *review denied* (2019) (unpublished) (“Generally, a
 5 common-law trust is not considered a legal entity capable of suing or being sued; therefore,
 6 any suit involving the trust must be brought by or against its trustee.”). Thus, a common-
 7 law trust cannot sue in its own name—such a suit must be brought by its trustee.¹ Thus,
 8 Lyons Family Trust must be dropped as a party to this lawsuit and can participate only
 9 through a trustee. Fed. R. Civ. P. 21.

10 Furthermore, the trustee must be represented by counsel. A nonlawyer cannot
 11 represent himself to the extent that he appears in his capacity as trustee for a trust. *C.E.*
 12 *Pope Equity Tr. v. United States*, 818 F.2d 696, 698 (9th Cir. 1987) (“Rule 17(a) authorizes
 13 a trustee of an express trust to sue on behalf of the trust, without joining persons ‘for whose
 14 benefit the action is brought;’ the rule does not warrant the conclusion that a nonlawyer
 15 can maintain such a suit *in propria persona*. The reciprocal relation between the bar and
 16 the bench permits an exception only for a person acting personally.”).

17 Accordingly,

18 **IT IS ORDERED** that Defendants’ motion for extension of time (Doc. 7) is
 19 **granted**. The deadline for Defendants to respond to the complaint is extended to July 14,
 20 2024.

21 **IT IS FURTHER ORDERED** that the Clerk of Court shall **drop** Plaintiff Lyons
 22 Family Trust as a party to this action pursuant to Rule 21 of the Federal Rules of Civil
 23 Procedure. Any amended complaint filed in this action may not add Lyons Family Trust
 24 as a party. The *trustee* of Lyons Family Trust can be added as a plaintiff to this action *only*
 25 if the amended complaint is filed by an attorney.

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 28 ¹ There is an exception to the general rule not applicable here. *See, e.g., McLeod v. Deutsche Bank Nat’l Tr. Co.*, 2017 WL 2189498, *3 (Ariz. Ct. App. 2017) (unpublished).

1 Dated this 18th day of June, 2024.

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4 Dominic W. Lanza
5 United States District Judge
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